

REMARKS

1. *Status of the Application.* Claims 1-20 were believed to be pending in the application as examined. The Office Action, in recognizing the pendency of only claims 1-10, appears to overlook the submission of a Preliminary Amendment filed on October 4, 2004 ("the Preliminary Amendment," copy attached), receipt of which having been acknowledged by the Office as evidenced by the stamped return receipt postcard (copy attached). The Transmittal Letter (Form PTO-1390, copy attached) accompanying the Preliminary Amendment reflects a fee calculation commensurate with the submission of claims 1-20.

Submission of the Preliminary Amendment resulting in pendency of claims 1-20, and not merely claims 1-10, is further evidenced by the Notice of Acceptance of Application Under 35 U.S.C. 371 and 37 C.F.R. 1.495 dated February 23, 2005 (copy attached), which Notice explicitly acknowledges receipt of the October 4, 2004 Preliminary Amendment. The Office Action itself appears to acknowledge, in Item 1 thereof, the submission of communications on October 4, 2004, which would include the Preliminary Amendment.

Claims 1-20 are set forth on the foregoing separate sheets as though the Preliminary Amendment had been submitted and entered, and thus reflects only claim amendments proposed in this Response.

2. *Objection to the Abstract.* The Abstract was objected to as apparently being a photocopy of the abstract from the corresponding PCT application. A new Abstract is proposed as set forth above. The new Abstract is believed to comply with applicable MPEP guidelines. Reconsideration and withdrawal of the objection to the Abstract is therefore requested.

3. *Objection to the Specification.* The Office Action sets forth suggested "guidelines" for the "Arrangement of the Specification," which suggestion the undersigned interprets to be an objection to the Specification. It is believed that the

accompanying Substitute Specification is in full conformance with 37 C.F.R. § 1.77(b), including appropriate section headings. No new matter is added through the re-arrangement of the Specification as suggested by the Office Action.

4. *Claim Objections.* Claim 10 was objected to as being improper as being a multiple dependent claim depending from another multiple dependent claim. The basis of this objection was eliminated through the amendments set forth in the Preliminary Amendment referenced above. Reconsideration and withdrawal of the objection to claim 10 is therefore requested, such that claim 10 as amended in the Preliminary Amendment and re-presented above will be considered on the merits.

5. *The Section 112 Rejections.* Claims 3-9 were rejected under 35 U.S.C. § 112 as being indefinite.

Regarding claim 3, the Office Action suggests that there is no antecedent basis for "the vertical bar (18)." Claim 3 is amended herein to refer to "a vertical bar (18)." This amendment is believed to obviate the basis for the § 112 rejection of claim 3; reconsideration and withdrawal of the rejection is therefore respectfully requested.

Regarding claim 4, the Office Action suggests that there is no antecedent basis for "the ends (22a) of the horizontal bars (22) of the T" therein. Claim 4 is amended herein to clarify that the T-shaped structural framework comprises "a horizontal bar (22)" and "opposing ends (22a)." No new matter is added by virtue of the amendments to claim 4, as is evident from, *inter alia*, Figures 1 and 2. These amendments are believed to obviate the basis for the § 112 rejection of claim 4; reconsideration and withdrawal of the rejection is therefore respectfully requested.

Regarding claim 5, the Office Action suggests that there is no antecedent basis for "the raised cross bar (26)" and "the two teeth (28)." Claim 5 has been amended herein to refer to the frame (12) comprising a fork "having a raised cross bar (26)" and "two teeth (28)." No new matter is added by virtue of the amendments to claim 5, as is evident from, *inter alia*, Figures 1 and 2. These amendments are believed to obviate the

basis for the § 112 rejection of claim 5; reconsideration and withdrawal of the rejection is therefore respectfully requested.

Regarding claim 7, the Office Action suggests that there is no antecedent basis for recitation of “the two teeth.” It is believed that the above-referenced amendments to claim 5 provide the necessary antecedent basis. Thus, reconsideration of the rejection of claim 7 on this basis is therefore requested.

The Office Action further suggests with respect to claim 7 that there is no antecedent basis for the recited “the ends of the teeth.” Claim 7 has been amended herein to refer simply to “said teeth (28),” which recitation finds the necessary antecedent basis in claim 5 as amended herein. Reconsideration and withdrawal of the rejection of claim 7 on this basis is therefore requested.

Regarding claim 9, the Office Action suggests that there is no antecedent basis for the recitation of “said padding member.” It is respectfully submitted that antecedent basis for this recitation is found in claim 8, such that no amendment to claim 9 is necessary. Reconsideration and withdrawal of the § 112 rejection of claim 9 is therefore respectfully requested.

6. *The Section 103 Rejections.* Claims 1-9 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,255,957 to Opsvik et al. (“Opsvik”) in view of U.S. Patent No.; 6,113,186 to Holmes et al. (“Holmes”). According to the Office Action, *Opsvik* shows “a seating module comprising a framework with a pommel element, a frame arranged above the framework and provided with a cantle element and means for connecting the frame to the framework including a joint allowing the frame to tilt in relation to the framework....” The Office Action concedes that *Opsvik* fails to show an elastic membrane on the frame, but concludes that it would have been obvious to incorporate the elastic membrane purportedly shown in *Holmes* into the *Opsvik* seating module.

It is respectfully submitted that the Office Action mischaracterizes *Opsvik* in substantively significant ways, and that in so doing, the Office Action reaches a conclusion that is not supported by the prior art relied upon.

In particular, it is believed that the Office Action's assertion that *Opsvik* discloses "a seating module comprising a framework with a pommel element, a frame arranged above the framework and provided with a cantle element..." (emphasis added) is wholly conclusory and is utterly without substantiation in fact. Nowhere does *Opsvik* either teach or suggest a seating module comprising a "structural framework" and "a frame arranged above the structural framework," (emphasis added) as is recited in claim 1 of the application.

On the contrary, *Opsvik* seems to clearly disclose nothing more than "a seat" (*Opsvik*, col. 6, line 9.) Furthermore, *Opsvik* states explicitly that "the chair itself is generally designated by reference numeral 1 [and] may as such be of a *known type*, comprising a seat 2 which is carried by a horizontally extending column 3 with included height adjustment...." (*Opsvik*, col. 6, lines 1-11) (emphasis added).

Significantly, nowhere does *Opsvik* teach or suggest a seating module as disclosed and claimed in the instant application, having a "structural framework" and a "frame," where the frame is arranged above the structural framework and is coupled thereto by means of a "joint" which allows the frame to tilt in relation to the structural framework."

In sum, it is submitted the Office Action's basis for rejection under § 103 is based upon incorrect characterization of *Opsvik*, leading to the complete disregard to numerous explicitly recited claim terms. *Opsvik* neither teaches nor suggests the presence of a "structural framework" (element 10 in the present disclosure), or a separate "frame" (element 12 in the present disclosure) which are connected by a "joint" (element 14) allowing the frame to tilt in relation to the structural framework. *Opsvik* discloses merely "a seat," and hence can in no respect be fairly characterized as teaching or suggesting an arrangement of a "structural framework" and a "frame,"

connected by a "joint" which allows for tilting of the frame "in relation to the structural framework."

The Office Action relies upon *Holmes* to provide the teaching of an "elastic membrane" that is conceded to be lacking the *Opsvik*, yet is further called for in claim 1 of the present application. It is respectfully submitted that the Office Action's reliance upon *Holmes* in this regard is misplaced in at least two respects.

Firstly, the "membrane" disclosed by *Holmes*, at least as far as can be generously presumed though a study of that reference, must be likened to the "backrest 42 and seat 50" of the *Holmes* chair. (*Holmes*, Fig. 4, and col. 3, line 5). However, *Holmes* describes these components as comprising "a flexible material such as fabric or leather," (*Holmes*, col. 3, lines 6-7), neither of which materials is traditionally known to possess "elastic" properties. Nothing in *Holmes* either teaches or suggests an *elastic* material, such as is disclosed and claimed in the present application, which elasticity is crucial for permitting the tilting of the frame with respect to the structural framework, as disclosed and claimed in the present application.

Secondly, nothing in the *Holmes* disclosure teaches or suggests that the material comprising either the seat or the backrest performs a function of defining "a rest position of the frame ... in relation to the structural framework." (see, e.g., Claim 1). No fair characterization of *Holmes* can infer such functionality, inasmuch as *Holmes*, like *Opsvik*, neither teaches nor suggests a "frame" and a "structural framework" that could have *any* sort of relative position defined by an elastic membrane.

Thus, it is submitted that neither *Opsvik* nor *Holmes*, taken either singly or in the proposed hypothetical combination, even arguably discloses a seating module as disclosed and claimed in the present application. Reconsideration and withdrawal of the § 103 rejection of claim 1 is therefore respectfully requested.

In view of the clear deficiencies of *Opsvik* and *Holmes*, either singly or in combination, in rendering obvious the novel arrangement of the seating module disclosed and claimed in the present application, as set forth above, it follows that the remaining § 103 rejections of dependent claims 2 through 9 are likewise unfounded in

In re Patent Application of Leguen et al. S.N. 10/510,456
Response to Notice of Non-Compliant Amendment and
Resubmission of Response to September 1, 2005 Office Action

fact, inasmuch as each of these claims by definition recites further limitations that, without the necessity of going into individual detail, cannot be rendered obvious by the relied-upon prior art. Reconsideration and withdrawal of the § 103 rejections of claims 2 through 9 is therefore also respectfully requested.

It is noted above that the Office Action does not recognize what the Applicants regard to be the legitimate pendency of claims 11-20 in the application. Nevertheless, the undersigned takes this opportunity to note that the arguments set forth with respect to claims 1 through 10 above apply with equal force and effect with respect to claims 11 through 20, which likewise depend, either directly or indirectly, from independent claim 1, which has been shown above to clearly distinguish itself from the prior art cited in the Office Action. Therefore, while no specific objections or rejections to claims 11 through 20 can be addressed herein, it is believed that any such objections or rejections would be effectively countered by the remarks set forth above. (Re)consideration and allowance of claims 11 through 20 is therefore respectfully requested.

* * * * *

CONCLUSION

In view of the foregoing amendments and remarks, it is believed that each of the claims 1 through 20 pending in the present application recite combinations of elements neither taught nor suggested by the prior art, and that the application as a whole is in proper form and condition for allowance. If the Examiner believes that the application can be placed in even better condition for allowance, he is invited to contact the undersigned directly at the telephone number listed below. Elsewise, it is respectfully requested that the application be further considered on the merits and advance to allowance and issuance at the earliest possible date.

Respectfully submitted,

Date: 8 - DEC - 2006

Hugh R. Kress

Hugh R. Kress
Reg. No. 36,574
BROWNING BUSHMAN P.C.
5718 Westheimer
Suite 1800
Houston, Texas 77057
713.266.5593 (voice)
713.266.5169 (fax)

ATTORNEY FOR APPLICANTS